IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5999 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

JIVANLAL R PATEL

Versus

G S R T C

Appearance:

1. Special Civil Application No. 5999 of 1988

MR AK CLERK for Petitioner No. 1

MR HARDIK C RAWAL for Respondent No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/09/2001

ORAL JUDGEMENT

1. The petitioner, a driver of the respondent - Gujarat State Road Transport Corporation, has, under Article 227 of the Constitution, challenged the award and order of the Labour Court, Ahmedabad in Reference (LCA)

No.870 of 1979 whereby he was ordered to be reinstated without backwages and with the punishment of withholding of one increment for one year.

2. It was contended by Mr.Clerk that the only misconduct alleged against the petitioner was that he had remained absent without leave for a period of about one-and-half months. The absence was sought to be explained before the Labour Court by producing a certificate of a doctor and, in any case, the denial of backwages for a period of ten years on the basis of absence for one-and-half months was too harsh and unconscionable. The learned counsel relied upon two judgments of this Court. In SARDARSINGH DEVISINGH v. DISTRICT SUPERINTENDENT OF POLICE, SABARKANTHA [1985 GLH 940], the absence was explained and justified on the proof of the workman concerned having suffered from tuberculosis. In VIJAYKUMAR MULJIBHAI JASANI v. GSRTC [1987 GLH 195], the absence was only for two days. The facts of the said cases are drastically different from the facts of this case.

3. In the facts of the present case, it is noted in the impugned award that the petitioner was absent without leave and even after the chargesheet and notices being served as regards the departmental enquiry held against him, the petitioner never cared to even reply to such notices or participate in the proceedings. When he carried the dispute to the Labour Court, the reference was once dismissed for default on his part and restored after more than one year. For the first time the petitioner sought to explain and justify his absence by producing a medical certificate dated 24.12.1985 in respect of his absence from 9.11.1977 to 2.2.1978 and the author of such certificate was never examined. In these facts and circumstances, after proper appreciation of evidence, the Labour Court has arrived at the finding of fact that the petitioner had remained absent without leave and the misconduct was proved beyond doubt. However, finding the punishment of dismissal to be too harsh, the impugned order was made, presumably in the exercise of powers under Section 11-A of the Industrial Disputes Act, as the lesser punishment in judicious exercise of its discretion.

4. The learned counsel for the respondent relied upon the recent judgment of this Court in MAGANBHAI L. CHAUHAN v. DIVISIONAL CONTROLLER, GSRTC [1999 (1) GLH 527], according to which, termination of service for wilful absence from duty was justified and mere production of a medical certificate justifying absence

would not exonerate an employee, particularly when the charge was proved in the enquiry.

5. In view of the facts and circumstances as above, the petition deserves to be dismissed. Accordingly, the same is dismissed with no order as to costs. Rule is discharged.

Sd/-

06.9.2001 (D.H.Waghela, J.)

(KMG Thilake)